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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RONALD DEAN YANDELL,

12 Plaintiff,

13 v.

14 DONALD WASHINGTON, et al.,

15 Defendants.
16

No. 2:21-cv-0469 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

17 Plaintiff, a federal pretrial detainee proceeding pro se, has filed this civil rights action
18 seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate
19 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 Before this court is plaintiff's motion for a preliminary injunction. ECF No. 7. For the
21 reasons stated below, the undersigned will recommend that the motion be denied.

22 I. PLAINTIFF'S COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

23 A. The Complaint

24 Plaintiff, who is currently detained at the Sacramento County Main Jail pending
25 prosecution in Case No. 2:19-cr-00107 KJM, challenges the conditions of his confinement.
26 Plaintiff names eight defendants: Donald Washington, Director of the U.S. Marshal Service;
27 Sacramento County Sheriff Scott Jones; Sacramento County Jail Commander Brandon Luke;
28 Assistant Commander McKarsie; Supervisors Folena and Schaller; Intelligence Deputy Saika;

1 and the jail chaplain, who is not identified by name. The complaint, filed on March 15, 2021
2 (ECF No. 1) alleges multiple violations of plaintiff's constitutional rights.

3 The undersigned has screened the complaint under 28 U.S.C. § 1915A and found that
4 none of the allegations state a claim upon which relief can be granted. ECF No. 8. Accordingly,
5 the complaint has not been served on any defendant. Plaintiff has been granted leave to amend.
6 Id.

7 B. The Motion for Preliminary Injunction

8 Plaintiff's motion for preliminary injunctive relief alleges that around August 2020, "jail
9 staff began to move [him] arbitrarily from cell to cell every 7 to 14 days in a scheme of planned
10 harassment." ECF No. 7 at 1. The cell moves occur each time that plaintiff is taken for a body
11 scan, which involves his exposure to newly arrived arrestees. Id. at 1-2. He alleges that this has
12 unnecessarily exposed him to potential contraction of COVID-19. See id. Plaintiff further
13 alleges that the cells in which he is being housed are unsanitary and that he is not provided with
14 proper disinfectant. See ECF No. 7 at 2. These allegations mirror those of Claim Five of the
15 complaint, ECF No. 1 at 7, 8.

16 Plaintiff seeks an order enjoining the cell moves and generally directing defendants
17 collectively to respect his rights. He argues that current conditions, if allowed to continue, will
18 create a substantial risk of irreparable harm to him in the form of COVID-19 infection, possibly
19 resulting in complications and/or death. ECF No. 7 at 2.

20 II. APPLICABLE LAW

21 "A preliminary injunction is an 'extraordinary and drastic remedy; it is never awarded as
22 of right.'" Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (citations omitted). When evaluating the
23 merits of a motion for preliminary injunctive relief, the court considers several factors. Under
24 Winter v. Natural Resources Defense Council, 555 U.S. 7 (2008), the proper test requires a party
25 to demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm
26 in the absence of an injunction; (3) the balance of equities tips in his favor, and (4) an injunction
27 is in the public interest. Winter, 555 U.S. at 20; see Stormans, Inc. v. Selecky, 586 F.3d 1109,
28 1127 (9th Cir. 2009) (citing Winter).

1 To the extent prior Ninth Circuit cases suggest a lesser standard by focusing on the mere
2 possibility of irreparable harm, such cases are “no longer controlling, or even viable.” Am.
3 Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009); see also
4 Sormans, Inc., 586 F.3d at 1127 (generally acknowledging same). The propriety of a request for
5 injunctive relief hinges on demonstrated and immediate threatened irreparable injury that must be
6 imminent in nature. Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674-75 (9th Cir.
7 1988); see also Associated General Contractors of California, Inc. v. Coalition for Economic
8 Equity, 950 F.2d 1401, 1410 (9th Cir. 1991) (plaintiff must do more than merely allege imminent
9 harm, he must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive
10 relief). In cases brought by prisoners involving conditions of confinement, any preliminary
11 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the
12 court finds requires preliminary relief, and be the least intrusive means necessary to correct the
13 harm.” 18 U.S.C. § 3626(a)(2).

14 A district court may not issue preliminary injunctive relief without primary jurisdiction
15 over the underlying cause of action. See Sires v. State of Washington, 314 F.2d 883, 884 (9th
16 Cir. 1963). Additionally, an injunction against individuals who are not parties to the action is
17 strongly disfavored. See, e.g., Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112
18 (1969).

19 III. DISCUSSION

20 Plaintiff’s motion for a preliminary injunction must be denied for several reasons. First,
21 the complaint has been found not to state a claim for relief, including on the grounds which form
22 the basis for the motion. No defendant has been served. Without a viable complaint that states a
23 cognizable claim, there is no basis for this court to exercise the jurisdiction necessary to provide
24 injunctive relief. See Sires, 314 F.2d at 884.

25 Second, the undersigned specifically found on screening that plaintiff’s allegations do not,
26 even liberally construed, demonstrate that his Fourteenth Amendment rights are being violated by
27 the cell moves. The allegations of unsanitary conditions and increased COVID-19 exposure due
28 to cell moves are entirely conclusory. See ECF No. 1 (complaint) at 7, 8; ECF No. 7 (motion for

1 preliminary injunction) at 1-2. Accordingly, plaintiff has not demonstrated a likelihood of
2 success on the merits of Claim Five of his complaint. Injunctive relief is therefore unavailable.
3 See Winter, 555 U.S. at 20.

4 Third, as the undersigned found on screening, plaintiff's allegations regarding risk of
5 harm are entirely speculative. The motion for preliminary injunctive relief does not provide
6 additional factual allegations that indicate either unconstitutionally unsafe conditions or a realistic
7 threat of imminent harm. Accordingly, plaintiff has failed to demonstrate the likelihood of
8 irreparable harm in the absence of an injunction. See Winter, 555 U.S. at 20; see also Fed. R.
9 Civ. P. 65(b)(A)(1) (movant must provide specific facts clearly showing immediate and
10 irreparable injury, loss or damage will result before adverse party can be heard in opposition).
11 The court has no illusions about the seriousness of COVID-19, but plaintiff has not presented
12 facts demonstrating that the cell moves and unspecified unsanitary conditions make it *likely* that
13 he will contract the virus and consequently suffer irreparable harm. Indeed, plaintiff himself
14 describes his risk of contracting COVID as "potential." ECF No. 7 at 2. Speculative injury does
15 not constitute irreparable injury sufficient to warrant issuance of preliminary injunction.
16 Caribbean Marine Servs. Co., 844 F.2d at 674.

17 CONCLUSION

18 For all these reasons, plaintiff's motion for a preliminary injunction should be denied.

19 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
20 District Court Judge to this action.


21 IT IS FURTHER RECOMMENDED that plaintiff's motion for a preliminary injunction
22 (ECF No. 7) be DENIED.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
25 after being served with these findings and recommendations, plaintiff may file written objections
26 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
27 and Recommendations." Plaintiff is advised that failure to file objections within the specified

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1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

3 DATED: May 12, 2021

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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